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In re Application of	:	
EAKIN	:	
Application No.: 10/568,056	:	NOTIFICATION
PCT No.: PCT/GB2004/003520	:	
Int. Filing Date: 13 August 2004	:	
Priority Date: 14 August 2003	:	
Attorney Docket No.: 3853 P 004	:	
For: OSTOMY/FISTULA BAG	:	

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371.

#### **BACKGROUND**

On 13 August 2004, applicant filed international application PCT/GB2004/003520, which claimed a priority date of 14 August 2003 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 24 February 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 14 February 2006.

On 10 February 2006, applicant filed a TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States. The U.S. Basic National Fee was not included. These application papers were *temporarily* assigned application number **10/568,006**.

On 13 February 2006, applicant filed a second TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee. These application papers were assigned application number **10/568,056**.

#### **DISCUSSION**

As is evident from the above recited facts, applicant submitted two sets of papers to enter the national stage for the same international application. The submission of two sets of national stage papers to enter the United States is improper.

35 U.S.C. 363 states:

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in 102(e) of this title. (emphasis added)

Further, 35 U.S.C. 371(b) states:

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2), or under article 39(1)(a) of the treaty. (emphasis added)

The language of 35 U.S.C. 363 and 371 refers to the national stage of the PCT in the singular only, and thus only one (1) national stage application in the U.S. may develop from an international application. The Transmittal Letters filed 10 February 2006 and 13 February 2006 indicate that each submission is "concerning a filing under 35 U.S.C. 371" of PCT/GB2004/003520. No conflicting instructions appear in the application papers. Accordingly, each submission should have been treated as a national stage application submitted under 35 U.S.C. 371. In that only one national stage of a PCT application is permitted, it would have been proper for all of the submissions to be placed in a single application and assigned a single application number. Scanning has already occurred in application number 10/568,056 while no processing has taken place in application number 10/568,006. Accordingly, all of the papers filed on 10 February 2006 and 13 February 2006 have been placed in application number **10/568,056**.

Applicant should use application number **10/568,056** in all future communications with the Patent and Trademark Office in regards to the U.S. national stage of international application PCT/GB2004/003520.

#### Preliminary Amendments

The preliminary amendment filed 13 February 2006 has been entered. The preliminary amendment filed 10 February 2006 will be placed in the application file but will not be further considered.

#### CONCLUSION

For the reasons set forth above, the submission filed 10 February 2006 and the submission filed 13 February 2006 have been placed in the file of application number **10/568,056**.

For the reasons set forth above, the application papers filed 13 February 2006 will be processed in application number **10/568,056** as the national stage application of PCT/GB2004/003520.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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